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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of) CC Docket No. 96-45
Federal-State Joint Board on)
Universal Service)

JOINT REPLY COMMENTS OF THE AMERICAN ASSOCIATION OF COMMUNITY COLLEGE AND THE ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES

The American Association of Community Colleges and the Association of Community College Trustees (the "Joint Commenters"), by their attorneys, hereby submit this pleading in response to comments filed in the above-referenced docket on December 19, 1996. The Joint Commenters address herein a limited number of critical issues that will impact directly the future accomplishment of Congress's universal service objectives.

I. Introduction

Throughout this universal service rulemaking proceeding, the Joint Commenters have consistently urged that federal universal service support be made available to community colleges under Section 254 of the Telecommunications Act of 1996. Specifically, they have recommended that financial assistance offered in the form of discounted rates to secondary schools also should be made available to community colleges. As identified in the Joint Commenters' prior comments, and as discussed further below, there are a number of statutory bases for identifying community colleges as targeted recipients of federal universal service support under the universal service provisions of the 1996 Act.

In addition, the Federal Communications Commission (the "Commission") should address within the context of this proceeding the distinct needs of schools, libraries and health

^{1/} The Telecommunications Act of 1996, Section 254 (1996), 47 C.F.R. § 254 (1996).

care providers through meaningful discounts made available according to a simple and straightforward federal program. The Commission should facilitate the meaningful participation of these entities by adopting an uncomplicated federal regime for obtaining the universal service benefits envisioned by Congress.

II. Universal Service Support Should be Made Available to Community Colleges Under Section 254 of the Telecommunications Act.

As discussed in the Joint Commenters' prior filings in this proceeding,^{2/} community colleges should be considered eligible for universal service discounts. Specifically, the Commission's universal service rules should apply to community colleges under Section 254(h)(5) to the extent they provide K-12 instruction, or under Section 254(h)(3) to the extent they can be classified as low income consumers of telecommunications services, and/or high cost consumers. Similarly, community college libraries should be eligible for discounts under Section 254(h)(4) federal universal service support mechanisms.

A number of commenters support this interpretation, stressing the importance of adopting flexible rules that make universal service support available to a broad range of educational institutions. The Department of Labor, for instance, stresses that "in a very real sense, community colleges are low income consumers of telecommunications services as the term is used in the 1996 Act 47 U.S.C. § 254 (b)(3)."^{3/} Moreover, the Secretary of Labor has stated that

^{2/} See Joint Comments of the American Association of Community Colleges and the Association of Community College Trustees, CC Docket No. 96-45 (filed December 19, 1996) ("AACC/ACCT December 19 Comments"); See also Joint Comments of the American Association of Community Colleges and the Association of Community College Trustees, CC Docket No. 96-45 (filed April 12, 1996); Joint Reply Comments of the American Association of Community Colleges and the Association of Community College Trustees, CC Docket No. 96-45 (filed May 8, 1996); Ex Parte Presentation, CC Docket No. 96-35 (filed October 23, 1996).

^{3/} See Letter to Reed S. Hundt, Chairman, FCC from Robert B. Reich, Secretary of Labor, at 2, filed December 19, 1996 (undated).

stated that if our nation is to provide the education and training required for the vast majority of new jobs in the coming century, we must look beyond the high school to the community college to provide the technology-rich learning required of a globally competitive workforce. This goal, he states, only can be accomplished if community colleges can be assured affordable access to core telecommunications and advanced services.

Others oppose any interpretation of Section 254 that would deny discount benefits to non-elementary/secondary and library participants that provide services to "eligible students." The Illinois State Board of Education urges the Commission to afford federal discounts to such institutions to the extent they provide services to eligible students. In addition, other commenters emphasize that *all* libraries eligible for support under the Library Services and Construction Act ("Library Services Act") should be eligible for federal universal service support, regardless of whether they are "public libraries." The American Library Association observes that recent amendments to the Library Services Act expressly promote technological innovation and electronic linkages with "any type of library," and even make funding available to "private libraries." The Commission's universal service rules should reflect this same

^{4/} *Id.* at 1.

^{5/} Id.

^{6/} See Comments of the Illinois State Board of Education at 10-11 (recognizing that local community colleges are increasingly offering educational programs to K-12 students to enhance their learning experience); see also AACC/ACCT December 19 Comments at 5 ("Universal service support mechanisms should include community colleges based on the nature of their educational activities and mission statements.").

^{7/} See Comments of the American Library Association at 10-13.

^{8/} See Comments of the American Library Association at 10-13; see also Comments of the Mississippi Council for Education Technology and the Mississippi Library Commission at 3 (recognizing that public libraries will share their telecommunications resources with public television, universities, community colleges and public schools as mandated by the Mississippi

flexibility by permitting community college libraries to benefit from federal universal support mechanisms when they: (1) make available to the general public, directly or indirectly, their oncampus collections and facilities for the benefit of "traditional" public library patrons; and/or (2) make their collections available to public libraries through resource sharing or other cooperative arrangements.

Finally, the Commission's universal service rules should support consortia among those entities eligible for federal universal service support and those that are ineligible to benefit from federal universal service discounts. Numerous parties, including state governments, recognize the importance of cooperation among eligible and ineligible entities, as well as the benefits of volume purchases, shared networks and coordinated information and resource exchanges. Moreover, there is no evidence presented in this proceeding that certifications and adequate monitoring of services obtained under the Commission's universal services rules cannot adequately guard against abuse. In fact, many Commenters, including the Joint Board, agree

Legislature).

^{9/} See Comments of Bell South at 38 (supporting ability of schools and libraries to participate in consortia for the purpose of aggregating their demand for telecommunications services and networks); Comments of Washington Utilities and Transportation Commission at 9 ("It is absolutely essential that schools, libraries and other public facilities participate in community-based demand aggregation efforts to ensure that advanced network services are available to all Americans."); Comments of Illinois State Board of Education at 9 (stating that consortia of educational institutions, including colleges and universities, community colleges, and non-profit community groups should be considered eligible institutions for the purpose of receiving discounts); Comments of Georgia Department of Administrative Services at 2 (recommending that Commission's rules not force the disaggregation of volume purchases, thereby causing costs to rise for schools, libraries, rural hospitals and state governments).

^{10/} While AT&T opposes mixed consortia because of the potential for abuse, it fails to address the mechanisms that can be placed in effect to prevent misappropriation of universal service funds and ignores the Joint Board's determination that the public interest would be better served if consortia comprised of eligible and ineligible entities were permitted. See Comments of AT&T at 22-23 (recommending that only eligible entities be permitted to enter consortium arrangements); but see Recommended Decision, CC Docket No. 96-45 at ¶ 596 (rel. November

that record-keeping by both carriers and recipients of universal service will prevent ineligible parties from benefits from funds targeted for use by low income or rural telecommunications consumers, qualifying schools, libraries and/or health care providers. 11/

III. The Commission's Universal Service Rules Must Facilitate Access to Advanced Services by Schools, Libraries and Health Care Providers.

The requirements for receiving universal service support should not be onerous or inadvertently hinder schools, libraries and health care providers from benefiting from federal universal service support mechanisms. Tele-Communications, Inc. recommends that the Commission adopt a requirement that schools and libraries submit comprehensive plans detailing how they will fund, implement and utilize access to advanced telecommunications and information services. It also recommends that state review and approval of these plans be required before any discount is permitted. While the Joint Commenters agree that safeguards must be in place to ensure that schools, libraries and health care providers use services obtained though the federal universal service program in a manner consistent with Congress' goals, the burdens on these institutions should not include detailed plans of implementation, or state approval of the plans prior to the receipt of proposed discounts.

^{8, 1996) (&}quot;Joint Board Recommendations") ("On careful review, we conclude that, despite the difficulties of allocating costs and preventing abuses, the benefits of permitting schools and libraries to join in consortia with other customers in the community . . . outweigh the danger that such aggregations will lead to significant abuse of the prohibition against resale."); see also Comments of Washington Utilities and Transportation Commission at 8 (stating that the benefits of permitting schools and libraries to join in consortia with other customers in their community outweigh any danger of significant abuse, especially if careful records are kept and reasonable cost allocations are made).

^{11/} See e.g. Comments of Time Warner at 35 (recognizing that the Commission's rules can and should ensure that consortia allocate costs equitably and distribute subsidy benefits only to those members that are eligible to receive universal service support); Comments of the Information Technology Industry Council at 7 (same).

<u>12</u>/ See Comments of Tele-Communications, Inc. at 3-6.

As explained in Comments submitted on December 19, many educational institutions, including community colleges, face significant financial restraints in their ability to access resources to secure telecommunications and advanced services. Requiring the preparation of comprehensive plans that mandate prior state approval will further strain current resources and potentially delay the ability of these entities to obtain much needed support in obtaining core telecommunications and advanced services.

At most, the Commission should require a certification that schools, libraries and health care service providers have a technology plan for implementing the services obtained through federal universal service mechanisms. This will protect against abuse and ensure that universal service benefits are efficiently used without imposing too great an administrative or financial burden on eligible schools, libraries and health care providers.

IV. Federal Universal Service Rules Should Support Internet Access and Inside Wiring Services for Schools, Libraries and Health Care Providers.

As recommended by the Joint Board, the Commission should include Internet access and inside wiring (and, where appropriate, internal wireless connectivity) as services eligible for universal service support under Section 254 of the Telecommunications Act. As established in this proceeding, Internet access is invaluable to the ability of educational institutions to provide students access to distant resources and instructional materials. It also is becoming increasingly vital to distant learning programs and interactive educational applications, particularly in rural areas.^{13/} Indeed, educators overwhelmingly view Internet data services as their most important

^{13/} Access to broadband facilities (e.g. T-1 lines) capable of supporting video uses, as well as Internet access, is critical to the delivery of effective distance learning programming. See Comments of the North Dakota Public Service Commission at 2 (supporting inclusion of Internet access in definition of universal service for schools, libraries and health care providers and recognizing that many communities in North Dakota are without a local Internet service provider).

educational need. 14/ Similarly, the importance of addressing the costs for providing internal wired or wireless access for schools and libraries cannot be underestimated. As indicated by the State of New Jersey, Division of the Ratepayer Advocate, discounts for the provision of Internet access and telecommunications services generally will be meaningless if schools and libraries cannot afford the cost of wiring the facilities for access. 15/

The recommendations of the Joint Board confirm that the Commission has authority to include both Internet access and internal connections as services eligible for federal universal service support. Parties opposing the inclusion of these services ignore the fact that Section 254(h)(2)(A) provides a broader framework for facilitating the deployment of services to schools and libraries because the competitively neutral rules contemplated under that section are applicable to all service providers. 16/

Moreover, the legislative history of Section 254(h) confirms that Congress intended that the universal service definition applicable to schools, libraries and health care providers include an "ability to obtain access to educational materials, research information, statistics, information on Government services, reports developed by Federal, State and local governments, and information services which can be carried over the Internet." Indeed, Congress expressly stated that Section 254(h) is intended to "provide the ability to browse library collections, review

^{14/} See Joint Board Recommendations at ¶ 454 (citing information provided by NTIA).

^{15/} See Comments of State of New Jersey, Division of the Ratepayer Advocate at 8-9 (stating that discounts will provide assistance to many states, such as New Jersey, which face the challenges presented by wiring classrooms in older school buildings, and thus may result in greater than average costs for providing access due to the age of the physical plant).

^{16/} See 47 U.S.C. § 254(h)(2)(A).

^{17/} See Joint Explanatory Statement of the Committee of Conference at 133 (released February 8, 1996) ("Conference Report").

the collections of museums, or find new information on the treatment of an illness to all Americans everywhere via schools and libraries." Similarly, Section 254, as well as Section 254(b)(6) of the 1996 Act, provide the Commission with broad authority to ensure that classrooms are "wired" to permit access to telecommunications and advanced services.

Commission precedent confirms that the installation and maintenance of internal connections is a "service" which can be supported by federal universal service mechanisms. 19/

In adopting the Joint Board's recommended definition of advanced services for schools, libraries and health care providers, the Commission also should confirm that providers of advanced services to schools, libraries and health care providers need not be providers of core telecommunications services to establish eligibility to participate in federal universal service mechanisms. As recognized by the Joint Board, the 1996 Act provides the Commission with authority to designate *additional* services for which support mechanisms would be available to schools, libraries and health care providers, independent of the core telecommunications services identified under Section 254(c)(1) of the 1996 Act.^{20/} Indeed, Congress desired that schools and libraries receive the services they need from the most efficient providers of those services.^{21/} The statute also envisions that non-telecommunications carriers providing eligible services to schools, libraries and health care providers are entitled to reimbursement from universal service

^{18/} *Id.* at 132.

^{19/} See Joint Board Recommendation at ¶ 474 and n. 1583.

^{20/} See Comments of Illinois State Board of Education at 5 (urging that schools and libraries be permitted to contract with services providers, individually or as a group, regardless of whether they are telecommunications carriers providing core services); Joint Board Recommendations at ¶ 544 ("there is not reason to exclude carriers who do not provide core services, if they can offer eligible services to a school or library at the lowest price").

^{21/} See Joint Board Recommendations at ¶ 544.

mechanisms. Unlike Section 254(h)(1), Section 254(h)(2) does not limit universal service support eligibility to "telecommunications carriers." 22/

Finally, Bell South's suggestion that new schools and libraries be excluded from universal services support should be rejected. It would be irrational to distinguish between schools eligible for universal service support, and those that are not, based on when they were constructed. All schools, libraries and health care providers that meet the definition of an entity eligible for universal service should enjoy the benefits of federal universal support; indeed, the 1996 Act requires it. Similarly, the Commission must permit schools, libraries and health care providers to benefit from federal universal service subsidies regardless of pre-existing contractual arrangements. It is critical that universal service eligibles that already have entered into contracts receive discounted rates no less favorable than those provided under the Commission's universal service rules. [24]

^{22/} A number of parties incorrectly argue that only those entities that contribute to the federal universal service fund are eligible to draw from the fund. See e.g. Comments of Bell South at 22 ("the Act does not authorize the Commission to designate non-telecommunications services as eligible for USF [Universal Service Fund] support"); Comment of Pacific Telesis Group at 39 ("Competitively neutral rules require that the category of service providers and services that receive support be the same as the category of service providers and services that provide support."); but see Comments of The Information Technology Association of America at 11 (stating that universal service contribution obligations should be applied only to carriers that provide interstate telecommunications services); Joint Board Recommendations at ¶ 613 (confirming that non-telecommunications carriers providing eligible services to schools, libraries and health care providers are entitled to reimbursement).

^{23/} See Comments of Bell South at 28.

^{24/} See e.g. Comments of New York State Education Department at 10 (recommending that schools be excused from prior contracts without penalty if the school can show that the contract would not permit it to receive lower rates under the federal universal service program); Comments of South Carolina Department of Education and Office of Information Resources at 6-7 (recognizing that restricting universal service fund eligibility to new contracts penalizes those who have already embraced new technologies or previously contracted for required services).

V. Conclusion

Consistent with the Congress' universal service objectives and the mandates of the 1996 Act, the Joint Commenters urge the Commission to adopt rules that offer the benefits of federal universal service mechanisms to community colleges. In addition, they request that the Commission adopt an administratively simple process for making universal service benefits broadly available to eligible entities thereby facilitating access to core telecommunications and advanced services to schools, libraries and health care providers.

Respectfully submitted,

AMERICAN ASSOCIATION OF
COMMUNITY COLLEGES
ASSOCIATION OF COMMUNITY COLLEGE

By:

Kenneth D. Salomon Leonard J. Kennedy Richard S. Denning

Their Counsel

DOW, LOHNES & ALBERTSON, PLLC 1200 New Hampshire Avenue, N.W. Washington, D.C. 20036-6802 (202) 776-2000

January 10, 1997

CERTIFICATE OF SERVICE

I, V. Lynne Lyttle, do hereby certify that on this 10th day of January, 1997, a copy of the foregoing "Reply Comments" was sent via first-class mail, postage pre-paid, to the following:

*The Honorable Reed E. Hundt, Chairman Federal Communications Commission 1919 M Street, N.W., Room 814 Washington, D.C. 20554

*The Honorable Rachelle B. Chong Commissioner Federal Communications Commission 1919 M Street, N.W., Room 844 Washington, D.C. 20554

The Honorable Julia Johnson Commissioner Florida Public Service Commission 2540 Shumard Oak Blvd. Gerald Gunter Building Tallahassee, FL 32399-0850

The Honorable Kenneth McClure Commissioner Missouri Public Service Commission 301 W. High Street, Suite 530 Jefferson City, MO 65101

The Honorable Sharon L. Nelson Chairman Washington Utilities and Transportation Commission P.O. Box 47250 Olympia, WA 98504-7250

The Honorable Laska Schoenfelder Commissioner South Dakota Public Utilities Commission State Capital, 500 E. Capitol Street Pierre, SD 57501-5070 Martha S. Hogerty, Esquire Public Counsel for the State of Missouri P.O. Box 7800 Jefferson City, MO 65102

Paul E. Pederson, State Staff Chair Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102

*Lisa Boehley Federal Communications Commission 2100 M Street, N.W., Room 8605 Washington, D.C. 20554

Charles Bolle South Dakota Public Utilities Commission State Capitol, 500 E. Capitol Street Pierre, SD 57501-5070

Deonne Bruning Nebraska Public Service Commission 300 The Atrium 1200 N Street, P.O. Box 94927 Lincoln, NE 68509-4927

*James Casserly
Federal Communications Commission
Office of Commissioner Ness
1919 M Street, N.W., Room 832
Washington, D.C. 20554

*John Clark Federal Communications Commission 2100 M Street, N.W., Room 8619 Washington, D.C. 20554 *Bryan Clopton Federal Communications Commission 2100 M Street, N.W., Room 8615 Washington, D.C. 20554

*Irene Flannery
Federal Communications Commission
2100 M Street, N.W., Room 8922
Washington, D.C. 20554

*Daniel Gonzalez
Federal Communications Commission
Office of Commissioner Chong
1919 M Street, N.W., Room 844
Washington, D.C 20554

*Emily Hoffnar Federal Communications Commission 2100 M Street, N.W., Room 8623 Washington, D.C. 20554

*L. Charles Keller Federal Communications Commission 2100 M Street, N.W., Room 8918 Washington, D.C. 20554

Lori Kenyon Alaska Public Utilities Commission 1016 West Sixth Avenue, Suite 400 Anchorage, AK 99501

*David Krech Federal Communications Commission 2025 M Street, N.W., Room 7130 Washington, D.C. 20554

Debra M. Kriete Pennsylvania Public Utilities Commission P.O. Box 3265 Harrisburg, PA 17105-3265

*Diane Law Federal Communications Commission 2100 M Street, N.W., Room 8920 Washington, D.C. 20554 Mark Long
Florida Public Service Commission
2540 Shumard Oak Blvd.
Gerald Gunter Building
Tallahassee, FL 32399

*Robert Loube Federal Communications Commission 2100 M Street, N.W., Room 8914 Washington, D.C. 20554

Samuel Loudenslager Arkansas Public Service Commission P.O. Box 400 Little Rock, AR 72203-0400

Sandra Makeeff
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Philip F. McClelland
Pennsylvania Office of Consumer
Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Michael A. McRae D.C. Office of the People's Counsel 1133 15th Street, N.W., Suite 500 Washington, D.C. 20005

*Tejal Mehta Federal Communications Commission 2100 M Street, N.W., Room 8625 Washington, D.C. 20554

Terry Monroe New York Public Service Commission 3 Empire Plaza Albany, NY 12223 *John Morabito
Deputy Division Chief, Accounting
and Audits
Federal Communications Commission
2000 L Street, N.W., Suite 812
Washington, D.C. 20554

*Mark Nadel Federal Communications Commission 2100 M Street, N.W., Room 8916 Washington, D.C. 20554

*John Nakahata
Federal Communications Commission
Office of the Chairman
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Lee Palagyi
Washington Utilities and Transportation
Commission
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504

*Kimberly Parker Federal Communications Commission 2100 M Street, N.W., Room 8609 Washington, D.C. 20554

Barry Payne Indiana Office of the Consumer Counsel 100 North Senate Avenue, Room N501 Indianapolis, IN 46204-2208

*Sheryl Todd (w/ diskette) Common Carrier Bureau Federal Communications Commission 2100 M Street, N.W., Room 8611 Washington, D.C. 20554 *Jeanine Poltronieri Federal Communications Commission 2100 M Street, N.W., Room 8924 Washington, D.C. 20554

James Bradford Ramsay
National Association of Regulatory Utility
Commissioners
P.O. Box 684
Washington, D.C. 20044-0684

Brian Roberts California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102

*Gary Seigel Federal Communications Commission 2000 L Street, N.W., Suite 812 Washington, D.C. 20554

*Richard Smith Federal Communications Commission 2100 M Street, N.W., Room 8605 Washington, D.C. 20554

*Pamela Szymczak Federal Communications Commission 2100 M Street, N.W., Room 8912 Washington, D.C. 20554

*Lori Wright Federal Communications Commission 2100 M Street, N.W., Room 8603 Washington, D.C. 20554

*International Transcription Service 2100 M Street, N.W., Room 140 Washington, D.C. 20037

V. Lynne Dyttle

* Indicates hand delivery.